

COUNCIL INTRODUCTION DRAFT 1/15/08
SHOWING CHANGES FROM EXISTING CODE

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE
CITY OF SANTA BARBARA AMENDING
TITLES 22 AND 28 OF THE SANTA BARBARA
MUNICIPAL CODE RELATING TO DESIGN
REVIEW AND NET FLOOR AREA
LIMITATIONS.

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES
ORDAIN AS FOLLOWS:

SECTION 1. Section 22.22.132 of Chapter 22.22 of Title 22 of the Santa
Barbara Municipal Code is amended to read as follows:

22.22.132 Historic Landmarks Commission Notice and Hearing.

A. **PROJECTS THAT REQUIRE PUBLIC HEARING.** Historic Landmarks
Commission review of the following projects must be preceded by a noticed
public hearing:

1. New single residential units, residential duplexes, multiple residential
units, mixed use (residential and non-residential) buildings, or nonresidential
buildings,
2. The addition of over 500 square feet of net floor area to a single
residential unit or residential duplex,

3. An addition of a new story or an addition to an existing second or higher story of a single residential unit or residential duplex,
4. The addition of over 500 square feet of net floor area or any change that will result in an additional residential unit to a multiple residential unit,
5. Small non-residential additions as defined in Section 28.87.300,
6. Projects involving grading in excess of 250 cubic yards outside the footprint of any main building (soil located within five feet (5') of an exterior wall of a main building that is excavated and recompact shall not be included in the calculation of the volume of grading outside the building footprint), or
7. Projects involving exterior lighting with the apparent potential to create significant glare on neighboring parcels.

B. **MAILED NOTICE.** Not less than ten calendar days before the date of the hearing required by Subsection A above, the City shall cause written notice of the hearing to be sent by first class mail to the following persons: (1) the applicant, and (2) the current record owner (as shown on the latest equalized assessment roll) of ~~each of the twenty (20) lots closest to the lot which is the subject of the action, and (3) the current record owner of~~ any lot, or any portion of a lot, which is located not more than ~~one~~three hundred feet (300') from the exterior boundaries of the lot which is the subject of the action. The written notice shall advise the recipient of the following: (1) the date, time and location of the hearing, (2) the right of the recipient to appear at the hearing and to be heard by the Historic Landmarks Commission, (3) the location of the subject property, and (4) the nature of the application subject to design review.

[Staff Comment: The revisions above to Subsection B. are labeled **Change 7** in the Council Agenda Report and the change is in the “Simplify Mailed Notice Requirements” change category. This change applies to: 22.22.132, 22.68.040.B & 22.69.040.B regarding mailed noticing. Staff recommends standardizing required mailed noticing to 300’ instead of the closest 20 neighbors. The Steering Committee noted that notifying the 20 closest neighbors would avoid the problem of having varying numbers of neighbors informed for each project where standard distances are used. For example, in large-lot neighborhoods, fewer property owners would be noticed within 300’ of a proposed project than the same standard used in small-lot neighborhoods. Staff has attempted to implement the 20 closest homes noticing function for mailings; however, staff has learned that it is not feasible to automate a map to be made for the 20 closest homes. Further, there is a benefit to having consistent noticing requirements for all Design Review and Planning hearings. This new standard of 300 feet was adopted as part of the Staff Hearing Officer process and is consistent with most communities in California. The tenant “door to door” method of additional noticing of the 20 closest neighbors would not be affected by this change in radius for mailed noticing. The requirement for 20 closest home data for some projects would also not be affected by this change.]

C. ADDITIONAL NOTICING METHODS. In addition to the required mailed notice specified in Subsection B, the City may also require notice of the hearing to be provided by the applicant in any other manner that the City deems necessary or desirable, including, but not limited to, posted notice on the project site and notice delivered to non-owner residents of any of the twenty (20) lots closest to the lot which is the subject of the action. However, the failure of any person or entity to receive notice given pursuant to such additional noticing methods shall not constitute grounds for any court to invalidate the actions of the City for which the notice was given.

D. PROJECTS REQUIRING DECISIONS BY THE CITY COUNCIL, PLANNING COMMISSION, OR STAFF HEARING OFFICER. Whenever a project requires another land use decision or approval by the City Council, the Planning Commission, or the Staff Hearing Officer, the mailed notice for the first

hearing before the Historic Landmarks Commission shall comply with the notice requirements of this Section or the notice requirements applicable to the other land use decision or approval, whichever are greater. However, nothing in this Section shall require either: 1. notice of any hearing before the Historic Landmarks Commission to be published in a newspaper, or 2. mailed notice of hearings before the Historic Landmarks Commission after the first hearing conducted by the Historic Landmarks Commission, except as otherwise provided in the Historic Landmarks Commission Guidelines adopted by resolution of the City Council.

SECTION 2. Section 22.22.133 of Chapter 22.22 of Title 22 of the Santa Barbara Municipal Code is amended to read as follows:

22.22.133 Historic Landmarks Commission Referral of Residential Projects to Planning Commission.

~~—A. **PLANNING COMMISSION APPROVAL.** Applications for residential development covered by this Chapter shall be reviewed and approved, disapproved or conditionally approved by the Planning Commission, in accordance with any standards set forth by Council Resolution, prior to final Historic Landmarks Commission action on the application whenever:~~

~~——1. The project requires the preparation of an environmental impact report ("EIR") pursuant to the California Environmental Quality Act; or~~

~~——2. Any portion of the site is located within the Hillside Design District and the floor area of all existing and proposed structures exceeds a cumulative total~~

~~of six thousand five hundred (6,500) square feet; or~~

~~—— 3. Any portion of the site is located within the Hillside Design District and the amount of grading exceeds five hundred (500) cubic yards of grading (cut and/or fill) on the lot excluding grading necessary for the building foundation for the main buildings.~~

~~—— The Planning Commission shall find that the criteria set forth in Section 22.22.131 are met prior to approving any application reviewed under this Subsection.~~

~~—— B. **PLANNING COMMISSION COMMENTS.** When the Historic Landmarks Commission determines that a project is proposed for a site which is highly visible to the public, the Commission may, prior to taking final action on the application, require presentation of the application to the Planning Commission solely for its comments to the Historic Landmarks Commission.~~

~~—— C. **PLANNING COMMISSION NOTICE AND HEARING.** The Planning Commission, or the City Council on appeal, shall hold a public hearing prior to taking any action on a project subject to its review and approval or comments under this Section. Not less than ten calendar days before the date of the public hearing, the City shall cause notice of the right to appear and be heard; the date, time and place of the hearing; the location of the property; and the nature of the request to be sent by first class mail to the current record owner of any lot, or any portion of a lot, which is located not more than three hundred feet (300') from the exterior boundaries of the lot which is the subject of the action. In addition to the required manners of notice specified above, the City may also require notice of~~

~~the hearing in any other manner it deems necessary or desirable, including, but not limited to, posted notice on the project site. However, the failure of any person or entity to receive notice given pursuant to such additional noticing methods shall not constitute grounds for any court to invalidate the actions of the City for which the notice was given.~~

A. **PLANNING COMMISSION COMMENTS.** When the Historic Landmarks Commission determines that a residential development is proposed for a site which is highly visible to the public, the Historic Landmarks Commission may, prior to granting preliminary approval of the application, require presentation of the application to the Planning Commission solely for the purpose of obtaining comments from the Planning Commission regarding the application for use by the Historic Landmarks Commission in its deliberations.

B. **PLANNING COMMISSION NOTICE AND HEARING.** Prior to making any comments regarding an application pursuant to this Section, the Planning Commission shall hold a noticed public hearing. Notice of the hearing shall be provided in accordance with the requirements of Section 22.22.132.

[Staff Comment: The addition of items “A” and “B”, above, is labeled **Change 8** in the Council Agenda Staff Report and is in the “Simple Correction “Clean Up” Items” change category. Under the “old” NPO, single family residential projects in the Hillside Design District that were 6,500 square feet or larger or involved grading 500 cubic yards or more were referred to the Planning Commission for review and comment. In an effort to simplify the Design Review process, this referral was removed for projects previously reviewed by the ABR (now reviewed by the SFDB). Due to an oversight during the update in May 2007, this treatment was not extended to projects subject to review by the HLC. This amendment will achieve the consistency of treatment that was intended. The proposed provisions for Planning Commission comments mirror those included in the May 2007 update of the ABR and SFDB Chapters.]

SECTION 3. Chapter 22.22 of Title 22 of the Santa Barbara Municipal Code is amended by adding Section 22.22.180 to read as follows:

22.22.180 Expiration of Approval.

A. TWO-YEAR EXPIRATION. A final approval by the Commission, as defined in the Historic Landmarks Commission Guidelines, shall expire by limitation and become null and void if a building permit for the building or work authorized by the approval is not issued within twenty four (24) months of the granting of the final approval by the Commission or the City Council, on appeal.

B. COMMUNITY DEVELOPMENT DIRECTOR EXTENSION. Upon a written request from the applicant prior to the expiration of the approval, the Community Development Director may grant one (1) twelve-month extension of the final approval. Extensions of time may be granted by the Community Development Director upon findings that the applicant has demonstrated due diligence to implement and complete the proposed development as substantiated by competent evidence in the record and that there are no changed circumstances that may affect the consistency of the development with this Chapter 22.22, the Historic Landmarks Commission Guidelines, and applicable City ordinances, resolutions and other laws.

C. EXTENSIONS BY THE HISTORIC LANDMARKS COMMISSION. In addition to the twelve-month extension by the Community Development Director, upon a written request from the applicant prior to the expiration of the approval, the Commission may grant up to two (2) twelve-month extensions of the final approval. Extensions of time may be granted by the Commission upon findings that the applicant has demonstrated due diligence to implement and complete

the proposed development as substantiated by competent evidence in the record and that there are no changed circumstances that may affect the consistency of the development with this Chapter 22.22, the Historic Landmarks Commission Guidelines, and applicable City ordinances, resolutions and other laws.

[Staff Comment: *The addition of Section 22.22.180 is labeled as **Change 9** in the Council Agenda Report and is in the “Simple Correction “Clean Up” Items” change category. This change adds two-year expiration dates for HLC final approvals to match SFDB and ABR expiration dates. An uncodified provision found in Section 11 of the Ordinance extends active HLC applications for an additional year for consistency of expiration time limits.]*

SECTION 4. Section 22.69.040 of Chapter 22.69 of Title 22 of the Santa Barbara Municipal Code is amended to read as follows:

22.68.040 Architectural Board of Review Notice and Hearing.

A. **PROJECTS THAT REQUIRE A NOTICED HEARING.** Review of the following projects by the Architectural Board of Review must be preceded by a noticed public hearing:

1. A new residential duplex, multiple residential unit, mixed-use (residential and non-residential) building, or non-residential building,
2. The addition of over 500 square feet of net floor area to a residential duplex or multiple residential unit,
3. An addition of a new story or an addition to an existing second or higher story of a residential duplex or multiple residential unit,
4. An addition or alteration to a multiple residential unit that will result in an additional residential unit,

5. Small non-residential additions as defined in Chapter 28.87.300 of this Code,

6. Projects involving grading in excess of 250 cubic yards outside the footprint of any main building (soil located within five feet (5') of an exterior wall of a main building that is excavated and recompactd shall not be included in the calculation of the volume of grading outside the building footprint), or

7. Projects involving exterior lighting with the apparent potential to create significant glare on neighboring parcels.

B. **MAILED NOTICE.** Not less than ten calendar days before the date of the hearing required by Subsection A above, the City shall cause written notice of the project hearing to be sent by first class mail to the following persons: (1) the applicant, and (2) the current record owner (as shown on the latest equalized assessment roll) of ~~each of the twenty (20) lots closest to the lot which is the subject of the action, and (3) the current record owner of~~ any lot, or any portion of a lot, which is located not more than ~~one~~three hundred feet (300') from the exterior boundaries of the lot which is the subject of the action. The written notice shall advise the recipient of the following: (1) the date, time and location of the hearing, (2) the right of the recipient to appear at the hearing and to be heard by the Architectural Board of Review, (3) the location of the subject property, and (4) the nature of the application subject to design review.

[Staff Comment: The revision above to Subsection B. is labeled **Change 7** in the Council Agenda Report and is in the "Simplify Mailed Notice Requirements" change category. This change applies to: 22.22.132, 22.68.040.B & 22.69.040.B regarding mailed noticing. Staff recommends standardizing required mailed noticing to 300' instead of the closest 20 neighbors. The Steering Committee noted that notifying the 20 closest neighbors would avoid the problem of having

varying numbers of neighbors informed for each project where standard distances are used. For example, in large-lot neighborhoods, fewer property owners would be noticed within 300' of a proposed project than the same standard used in a small-lot neighborhoods. Staff has attempted to implement the 20 closest homes noticing function for mailings; however, staff has learned that it is not feasible to automate a map to be made for the 20 closest homes. Further, there is a benefit to having consistent noticing requirements for all Design Review and Planning hearings. This new standard of 300 feet was adopted as part of the Staff Hearing Officer process and is consistent with most communities in California. The tenant "door to door" method of additional noticing of the 20 closest neighbors would not be affected by this change in radius for mailed noticing. The requirement for 20 closest home data for some projects would also not be affected by this change.]

C. ADDITIONAL NOTICING METHODS. In addition to the required mailed notice specified in Subsection B, the City may also require notice of the hearing to be provided by the applicant in any other manner that the City deems necessary or desirable, including, but not limited to, posted notice on the project site and notice delivered to non-owner residents of any of the twenty (20) lots closest to the lot which is the subject of the action. However, the failure of any person or entity to receive notice given pursuant to such additional noticing methods shall not constitute grounds for any court to invalidate the actions of the City for which the notice was given.

D. PROJECTS REQUIRING DECISIONS BY THE CITY COUNCIL, PLANNING COMMISSION, OR STAFF HEARING OFFICER. Whenever a project requires another land use decision or approval by the City Council, the Planning Commission, or the Staff Hearing Officer, the mailed notice of the first hearing before the Architectural Board of Review shall comply with the notice requirements of this Section or the notice requirements applicable to the other land use decision or approval, whichever are greater. However, nothing in this

Section shall require either: 1. notice of any hearing before the Architectural Board of Review to be published in a newspaper, or 2. mailed notice of hearings before the Architectural Board of Review after the first hearing conducted by the Architectural Board of Review, except as otherwise provided in the Architectural Board of Review Guidelines adopted by resolution of the City Council.

SECTION 5. Section 22.69.020 of Chapter 22.69 of Title 22 of the Santa Barbara Municipal Code is amended to read as follows:

22.69.020 Neighborhood Preservation - Single Family Residential Unit

Design Review.

A. **APPROVAL REQUIRED BEFORE ISSUANCE OF PERMIT.** No building permit, grading permit, vegetation removal permit, or subdivision grading plan, the application for which is subject to the review of the Single Family Design Board pursuant to this Chapter 22.69, shall be issued without the approval of the Board or the City Council, on appeal.

B. BUILDING PERMITS - SPECIAL DESIGN DISTRICTS.

1. **Mission Area Special Design District and Lower Riviera Survey Area - Bungalow District.** Applications for building permits to construct, alter, or add to the exterior of a single family residential unit or a related accessory structure on a lot or lots within the Mission Area Special Design District or the Lower Riviera Survey Area - Bungalow District identified in Section 22.68.060 shall be referred to the Single Family Design Board for design review in

accordance with the requirements of this Chapter and the approved Single Family Design Board Guidelines.

2. **Hillside Design District.** Applications for building permits to construct, alter, or add to the exterior of a single family residential unit or a related accessory structure on a lot or lots within the Hillside Design District identified in Section 22.68.060 shall be referred to the Single Family Design Board for design review in accordance with the requirements of this Chapter and the approved Single Family Design Board Guidelines if either:

a. The average slope of the lot or the building site is 20% or more as calculated pursuant to Section 28.15.080 of this Code; or

b. The application involves a structural alteration to the roof form or the replacement of the roof covering of a building on the lot.

C. **BUILDING PERMITS - SINGLE FAMILY RESIDENTIAL UNITS.**

Applications for building permits to construct, alter, or add to the exterior of a single family residential unit or a related accessory structure on any lot shall be referred to the Single Family Design Board for design review in accordance with the requirements of this Chapter and the Single Family Design Board Guidelines if the project for which the building permit is sought involves any of the following:

1. The construction, ~~alteration, or addition of any portion of a building that is taller than one story and a basement~~ of a new building or structure where any portion of the proposed construction is either: (i) two or more stories tall, or (ii) seventeen feet (17') or taller in building height (for purposes of this paragraph 1.

building height shall be measured from natural grade or finished grade, whichever is lower), or

2. ~~The construction, alteration, or addition of any portion of a building or structure that is~~ An alteration to an existing building or structure where any portion of the proposed alteration either: (i) alters the second or higher story of the building or structure, or (ii) alters a point on the existing building or structure that is seventeen feet (17') or ~~taller~~higher in building height (for purposes of this paragraph 2, building height shall be measured from natural grade or finished grade, whichever is lower), or

3. An addition to an existing building or structure where any part of the proposed addition is either: (i) two or more stories tall, or (ii) seventeen feet (17') or taller in building height (for purposes of this paragraph 3, building height shall be measured from natural grade or finished grade, whichever is lower), or

[Staff Comment: The revisions above to 22.69.020.C.1, .2 & .3 (Height & Story Triggers) are labeled **Change 1** in the Council Agenda Report and the change is in the "Clarifies which categories of projects are subject to Design Review" category of changes. The triggers for new construction, alterations and additions have been separated to clarify which alterations and additions are intended to trigger Design Review. The new language focuses attention on the new construction, the specific location of the alteration to an existing building, or the height of the new addition. Of particular importance to the revisions is the clarification that alterations or additions to an existing two-story structure will not trigger review unless the proposed work is on the second story or 17 feet or higher in building height.

Also, prior to the May 2007 revision, the NPO generally exempted projects that were "one story and a basement" from Design Review under the miscellaneous design criteria. However, many projects that are one story and a basement can look like two stories to the public. In addition, the Zoning Ordinance definition of a basement states that all basements are considered stories. Throughout the NPO Update process, the concept of referring two or more story projects for review was discussed and supported. This change will trigger Design Review for projects that were previously exempt as one story and a basement and under 17

feet in building height. This change also affects section 28.15.083 to clarify that two or more story projects can be considered for FAR requirements depending on other factors, rather than projects taller than “one story and a basement”. This change will not affect the floor to lot area ratio (FAR) square footage discounts available to some projects with basements.]

34. The net floor area of all floors of all existing and new buildings on the lot will exceed four thousand (4,000) square feet as calculated pursuant to

Section 28.15.083 of this Code, or

5. The project requires a net floor area modification pursuant to Section 28.92.110.A.6 of this Code, or

[Staff Comment: *The addition of paragraph 5 is labeled **Change 2** in the Council Agenda Staff Report and is in the “Clarifies which categories of projects are subject to Design Review” category of changes. Under the May 2007 Ordinance, homes that propose development in excess of the FAR limits require a modification. One of the findings required in order to approve a modification of the FAR standard is a finding that the project received 5 positive votes from the SFDB. However, staff has discovered that it is possible to design a home that exceeds the FAR standards, but does not trigger Design Review under the NPO. Therefore, staff recommends a new Design Review trigger to ensure that any project that proposes development in excess of the FAR standards will receive the necessary Design Review.]*

46. The construction, alteration, or addition of a deck on the second or higher floor (including roof decks) or a balcony on the second or higher floor of any building that will extend perpendicularly more than three feet (3') from the adjacent exterior wall or will be more than seven feet (7') in length in the dimension parallel to the adjacent exterior wall, or

57. The construction, alteration, or addition of a retaining wall ~~in excess of that is~~ six feet (6') or greater in height, or

[Staff Comment: This revision will require walls of six feet in height to be reviewed, previously, only walls taller than six feet were required to be reviewed. This change creates a height trigger consistent with the item below for wall height triggers.]

68. The construction, alteration, or addition of a wall, fence or gate in the front yard of the lot ~~in excess of eight~~ that is six feet (~~8~~6') or greater in height, excluding walls, fences, or gates that are constructed along the interior lot lines of the lot, shall be referred to the Single Family Design Board for a review of the proposed wall, fence or gate, or

*[Staff Comment: The revisions to paragraphs 7 and 8 are labeled **Change 3** in the Council Agenda Report and are in the “Clarifies which categories of projects are subject to Design Review” category of changes. The May 2007 Ordinance requires Design Review for new walls in the front yard over eight feet tall. However, a six feet wall height trigger was intended, because the maximum height for wall in a single-family zoned front yard setback is eight feet. Single-family walls over eight feet tall are very rarely proposed due to a zoning modification that would be required for such a proposal. A wall six feet or taller in the front yard can have potential neighborhood compatibility issues. This amendment would change the SFDB review trigger to a six foot height instead of an eight foot height.]*

79. The installation of a manufactured home, mobile home or factory-built home (as those terms are defined in the California Health and Safety Code) subject to the limitations on review specified in Government Code section 65852.3 et seq., or

810. The installation of a single family residential unit that was, as a whole or in part, previously located on another lot.

11. Grading outside the footprint of the main building on the lot that exceeds either: (i) fifty (50) cubic yards on a lot within the Hillside Design District identified in Section 22.68.060, or (ii) two hundred fifty (250) cubic yards on a lot that is not within the Hillside Design District. For purposes of this paragraph 11,

soil located within five feet (5') of an exterior wall of a main building that is excavated and recompactd shall not be included in the calculation of the volume of grading outside the main building footprint.

*[Staff Comment: The addition of paragraph 11 is labeled **Change 4** in the Council Agenda Staff Report and is in the "Clarifies which categories of projects are subject to Design Review" category of changes. Staff is concerned that projects may be designed in a manner that avoids Design Review under the current triggers but still involves significant grading on the site outside the main building footprints. Therefore, staff recommends a new trigger for building projects that involve over 50 cubic yards of grading in the Hillside Design District, or 250 cubic yards of grading in Infill areas. This Ordinance addition complements the May 2007 ordinance language in section 22.69.020.E regarding "grading only" projects.]*

D. SUBDIVISION GRADING PLANS. All subdivision grading plans involving grading on a lot or lots located in any of the single family zones listed in Chapter 28.15 of this Code shall be referred to the Single Family Design Board for a review of the proposed grading.

E. GRADING PERMITS. Applications for grading permits that propose grading on a vacant lot or lots located within a single family zone listed in Chapter 28.15 of this Code or on any lot that is developed exclusively with a single family residence and related accessory buildings and which are not submitted in connection with an application for a building permit for the construction or alteration of a building or structure on the same lot or lots shall be referred to the Single Family Design Board for a review of the proposed grading.

~~Prior to approving a grading permit, the Single Family Design Board shall find, in addition to the findings in Section 22.69.050, that the proposed grading will result in the following:~~

~~1. No significant increase in siltation or decrease in water quality of streams, drainages or water storage facilities to which the property drains; and~~

~~2. No substantial loss of southern oak woodland habitat.~~

F. **VEGETATION REMOVAL PERMITS.** Applications for vegetation removal permits pursuant to Chapter 22.10 of this Code on a lot or lots located within a single family zone listed in Chapter 28.15 of this code or on any lot that is developed exclusively with a single family residence and related accessory buildings shall be referred to the Single Family Design Board for a review of the proposed vegetation removal. ~~Prior to approving a vegetation removal permit, the Single Family Design Board shall find, in addition to the findings in Section 22.69.050, that the proposed vegetation removal:~~

~~1. Will result in no significant increase in siltation or decrease in water quality of streams, drainages or water storage facilities to which the property drains; and~~

~~2. Will result in no substantial loss of southern oak woodland habitat; and~~

~~3. Will comply with all applicable provisions of Chapter 22.10, "Vegetation Removal," of this Code.~~

*[Staff Comment: The changes to Subsections E and F are labeled **Change 10** in the Council Agenda Staff Report and are in the "Simple correction "clean-up" Items" category of changes. The findings previously included in Subsections E and F have been moved to the findings section, Section 22.69.050. The language of the findings and when they are required has not changed.]*

G. **RETAINING WALLS.** The following types of retaining wall improvements, if located on a lot or lots within a single family zone listed in Chapter 28.15 of this Code or on any lot that is developed exclusively with a single family residence

and related accessory buildings, shall be referred to the Single Family Design Board for design review of the proposed retaining walls in accordance with the requirements of this Chapter and the approved Single Family Design Board

Guidelines:

[Staff Comment: *The revision to Subsection G is labeled **Change 5** in the Council Agenda Staff Report and is in the “Clarifies which categories of projects are subject to Design Review” category of changes. The change clarifies that, where retaining walls are the only aspect of a project that “triggers” Design Review, the hearing body would only review the proposed retaining wall work, even if other non-related work is also proposed at the same time. This clarification follows the pattern of focused review of subdivision grading plans, grading only projects, and vegetation removal permits.]*

1. The construction of a retaining wall on a lot or a building site with an average slope of 15% or more (as calculated pursuant to Section 28.15.080 of this Code), or
2. The construction of a retaining wall on a lot that is adjacent to or contains an ocean bluff, or
3. The construction of multiple terracing retaining walls that are not separated by a building or a horizontal distance of more than ten feet (10') where the combined height of the walls exceeds six feet (6').

H. **SUBMITTAL REQUIREMENTS.** Applications for review by the Single Family Design Board shall be made in writing in such form as is approved by the Director of Community Development. No application shall be considered complete unless accompanied by the application fee in the amount established by resolution of the City Council.

I. **ADMINISTRATIVE APPROVAL.** Minor design alterations, as specified in the Single Family Design Guidelines or the Single Family Design Board

Guidelines approved by a resolution of the City Council, may be approved as a ministerial action by the Community Development Director or the Director's designee without review by the Single Family Design Board. The Community Development Director (or the Director's designee) shall have the authority and discretion to refer any minor design alteration to the Single Family Design Board if, in the opinion of the Community Development Director, the alteration has the potential to have an adverse effect on the architectural integrity of the building, structure or surrounding property.

J. PRESUMPTION REGARDING PRIOR GRADING, TREE REMOVAL, AND CONSTRUCTION. There shall be a presumption that any grading, removal of trees, or construction that occurred on the lot within two years prior to the submittal of an application for a building permit to construct, alter, or add to a single family residential unit or a related accessory structure was done in anticipation of such application, and said activities will be included in determining whether the project is subject to review by the Single Family Design Board pursuant to this Chapter. For purposes of this presumption, if the prior work required a permit from the City, the prior work shall not be considered complete unless a final inspection has occurred or a certificate of occupancy has been issued. An applicant has the burden to rebut this presumption with substantial evidence sufficient to convince the Single Family Design Board that such work was not done in an effort to avoid review of the entirety of the project by the Single Family Design Board.

K. **SINGLE FAMILY DESIGN GUIDELINES.** The Single Family Design Guidelines adopted by resolution of the City Council shall provide direction and appropriate guidance to decision makers and City staff in connection with applications reviewed pursuant to this Chapter.

SECTION 6. Section 22.69.040 of Chapter 22.69 of Title 22 of the Santa Barbara Municipal Code is amended to read as follows:

22.69.040 Single Family Design Board Notice and Hearing.

A. **PROJECTS THAT REQUIRE A NOTICED PUBLIC HEARING.** Single Family Design Board review of the following projects must be preceded by a noticed public hearing:

1. New single family residential unit,
2. The addition of over 500 square feet of net floor area to a single residential unit including any related accessory structures,
3. An addition of a new story or an addition to an existing second or higher story of a single residential unit or a related accessory structure,

[Staff Comment: The revisions to paragraphs 1, 2, and 3 are labeled **Change 6** in the Council Agenda Staff Report and are in the “Noticing Proposals” change category. The change clarifies that single family accessory structure project components are considered in mailed noticing triggers for SFDB and HLC. This change formalizes past administrative practice.]

4. Projects involving grading in excess of 250 cubic yards outside the footprint of any main building (soil located within five feet (5') of an exterior wall of

a main building that is excavated and recompact shall not be included in the calculation of the volume of grading outside the building footprint), or

5. Projects involving exterior lighting with the apparent potential to create significant glare on neighboring parcels.

B. **MAILED NOTICE.** Not less than ten calendar days before the date of the hearing required by Subsection A above, the City shall cause written notice of the project hearing to be sent by first class mail to the following persons: (1) the applicant, and (2) the current record owner (as shown on the latest equalized assessment roll) of ~~each of the twenty (20) lots closest to the lot which is the subject of the action, and (3) the current record owner of~~ any lot, or any portion of a lot, which is located not more than ~~onethree~~ hundred feet (300') from the exterior boundaries of the lot which is the subject of the action. The written notice shall advise the recipient of the following: (1) the date, time and location of the hearing, (2) the right of the recipient to appear at the hearing and to be heard by the Single Family Design Board, (3) the location of the subject property, and (4) the nature of the application subject to design review.

[Staff Comment: The revision above to Subsection B. is labeled **Change 7** in the Council Agenda Report and is in the “Noticing Proposals” change category. This change applies to: 22.22.132, 22.68.040.B & 22.69.040.B regarding mailed noticing. Staff recommends standardizing required mailed noticing to 300’ instead of the closest 20 neighbors. The Steering Committee noted that notifying the 20 closest neighbors would avoid the problem of having varying numbers of neighbors informed for each project where standard distances are used. For example, in large-lot neighborhoods, fewer property owners would be noticed within 300’ of a proposed project than the same standard used in a small-lot neighborhoods. Staff has attempted to implement the 20 closest homes noticing function for mailings; however, staff has learned that it is not feasible to automate a map to be made for the 20 closest homes. Further, there is a benefit to having consistent noticing requirements for all Design Review and Planning hearings. This new standard of 300 feet was adopted as part of the Staff Hearing Officer

process and is consistent with most communities in California. The tenant “door to door” method of additional noticing of the 20 closest neighbors would not be affected by this change in radius for mailed noticing. The requirement for 20 closest home data for some projects would also not be affected by this change.]

C. ADDITIONAL NOTICING METHODS. In addition to the required mailed notice specified in Subsection B, the City may also require notice of the hearing to be provided by the applicant in any other manner that the City deems necessary or desirable, including, but not limited to, posted notice on the project site and notice delivered to non-owner residents of any of the twenty (20) lots closest to the lot which is the subject of the action. However, the failure of any person or entity to receive notice given pursuant to such additional noticing methods shall not constitute grounds for any court to invalidate the actions of the City for which the notice was given.

D. PROJECTS REQUIRING DECISIONS BY THE CITY COUNCIL, PLANNING COMMISSION, OR STAFF HEARING OFFICER. Whenever a project requires another land use decision or approval by the City Council, the Planning Commission, or the Staff Hearing Officer, the mailed notice of the first hearing before the Single Family Design Board shall comply with the notice requirements of this Section or the notice requirements applicable to the other land use decision or approval, whichever are greater. However, nothing in this Section shall require either: 1. notice of any hearing before the Single Family Design Board to be published in a newspaper, or 2. mailed notice of hearings before the Single Family Design Board after the first hearing conducted by the

Single Family Design Board, except as otherwise provided in the Single Family Design Board Guidelines adopted by resolution of the City Council.

SECTION 7. Section 22.69.050 of Chapter 22.69 of Title 22 of the Santa Barbara Municipal Code is hereby amended to read as follows:

22.69.050 Neighborhood Preservation, Grading and Vegetation Removal

Ordinance Findings.

If a project is referred to the Single Family Design Board for review pursuant to Section 22.69.020 and the Single Family Design Board Guidelines, the Single Family Design Board shall make the findings specified below prior to approving the project.

A. **NEIGHBORHOOD PRESERVATION FINDINGS.** Prior to approval of any project, the Single Family Design Board shall make each of the following findings:

1. **Consistency and Appearance.** The proposed development is consistent with the scenic character of the City and will enhance the appearance of the neighborhood.

2. **Compatibility.** The proposed development is compatible with the neighborhood, and its size, bulk, and scale are appropriate to the site and neighborhood.

3. **Quality Architecture and Materials.** The proposed buildings and structures are designed with quality architectural details. The proposed materials and colors maintain the natural appearance of the ridgeline or hillside.

4. **Trees.** The proposed project does not include the removal of or significantly impact any designated Specimen Tree, Historic Tree or Landmark Tree. The proposed project, to the maximum extent feasible, preserves and protects healthy, non-invasive trees with a trunk diameter of four inches (4") or more measured four feet (4') above natural grade. If the project includes the removal of any healthy, non-invasive tree with a diameter of four inches (4") or more measured four feet (4') above natural grade, the project includes a plan to mitigate the impact of such removal by planting replacement trees in accordance with applicable tree replacement ratios.

5. **Health, Safety, and Welfare.** The public health, safety, and welfare are appropriately protected and preserved.

6. **Good Neighbor Guidelines.** The project generally complies with the Good Neighbor Guidelines regarding privacy, landscaping, noise and lighting.

7. **Public Views.** The development, including proposed structures and grading, preserves significant public scenic views of and from the hillside.

B. **HILLSIDE DESIGN DISTRICT AND SLOPED LOT FINDINGS.** In addition to the findings specified in Subsection A above, prior to approval of any project on a lot within the Hillside Design District described in Section 22.68.060 or on a lot or a building site that has an average slope of 15% or more (as

calculated pursuant to Section 28.15.080 of this Code), the Single Family Design Board shall make each of the following findings:

1. **Natural Topography Protection.** The development, including the proposed structures and grading, is appropriate to the site, is designed to avoid visible scarring, and does not significantly modify the natural topography of the site or the natural appearance of any ridgeline or hillside.

2. **Building Scale.** The development maintains a scale and form that blends with the hillside by minimizing the visual appearance of structures and the overall height of structures.

C. **GRADING FINDINGS.** In addition to any other applicable findings specified in this Section 22.69.050, prior to approval of any project that requires design review under either Paragraph 22.69.030.C.11 or Subsection 22.69.030.E of this Chapter, the Single Family Design Board shall make each of the following findings:

1. The proposed grading will not significantly increase siltation in or decrease the water quality of streams, drainages or water storage facilities to which the property drains; and

2. The proposed grading will not cause a substantial loss of southern oak woodland habitat.

D. **VEGETATION REMOVAL FINDINGS.** In addition to any other applicable findings specified in this Section 22.69.050, prior to approving a vegetation removal permit that requires design review under Subsection 22.69.030.F of this

Chapter, the Single Family Design Board shall make each of the following findings:

1. The proposed vegetation removal will not significantly increase siltation in or decrease the water quality of streams, drainages or water storage facilities to which the property drains; and

2. The proposed vegetation removal will not cause a substantial loss of southern oak woodland habitat; and

3. The proposed vegetation removal will comply with all applicable provisions of Chapter 22.10, "Vegetation Removal," of this Code.

[Staff Comment: *The revisions to Section 22.69.050 are numbered **Change 10** in the Council Agenda Staff Report and are in the "Simple correction "clean-up" items" category of changes. Grading and Vegetation Removal findings that are required for some single family developments are proposed to be moved to be adjacent to the Neighborhood Preservation Ordinance Findings. The purpose of moving the findings is so that all of the findings specific to single-family projects are grouped together in the ordinance for easier ordinance navigation. The content of the findings has not been changed; only their placement in the ordinance was changed.]*

SECTION 8. Section 22.70.050 of Chapter 22.70 of Title 22 of the Santa Barbara Municipal Code is hereby amended to read as follows:

22.70.050 Sign Permits.

A. APPLICATION. Any person desiring to construct, maintain or display a sign for which a permit is required shall submit an application to the Planning Division of the Community Development Department. The application shall be made upon forms provided by the Community Development Department and

shall be accompanied by the following materials:

1. Two copies of a plan showing:
 - a. The position of each sign and its relation to adjacent buildings or structures.
 - b. The proposed design, size, colors, and location on the premises of each sign including the type and intensity of any proposed lighting.
2. A statement showing the sizes and dimensions of all signs existing on the premises at the time of making such application.
3. Such other information as the Director of the Community Development Department may require to show full compliance with this and all other ordinances of the City of Santa Barbara.
4. A written authorization to submit the sign permit application signed by the property owner or lessee.

B. FEES. The sign permit application shall be accompanied by the appropriate fee established by the City Council by resolution. If installation of a sign is commenced before an application for a permit is made or before the plans are approved by the Sign Committee, the applicant shall be charged an additional field inspection fee equal to the permit fee.

C. PROCESSING APPLICATIONS.

1. Community Development Department staff shall review the application and accept it as complete or reject it as incomplete within three (3) working days from the date of filing.
2. No sign permit application will be accepted if:

a. The applicant has installed a sign in violation of the provisions of this Chapter and, at the time of the submission of the application, each illegal sign has not been legalized, removed or included in the application; or

b. Any sign under the control of the applicant on the premises of the proposed sign was installed in violation of this Chapter and at the time of submission of the application, each illegal sign has not been legalized, removed or included in the application; or

c. The sign permit application is substantially the same as an application previously denied by staff or the Sign Committee or, on appeal, by the Historic Landmarks Commission, the Architectural Board of Review, or the City Council, unless:

(1) Twelve (12) months have elapsed from the date of the final decision on the application; or

(2) New evidence or proof of changed conditions is furnished in the new application.

D. BUILDING AND ELECTRICAL PERMITS. After a sign has been approved by the Sign Committee the applicant shall obtain all required building and electrical permits from the Division of Land Use Controls of the Community Development Department.

E. CONFORMING SIGN REVIEW. Applications for signs conforming to the Sign Ordinance and Sign Review Guidelines may be eligible for review and approval by the Chair or Vice-Chair of the Sign Committee or their designated alternate. Conforming signs which meet the following criteria shall be referred by

Staff for Conforming Sign Review:

1. Minor wording, name, color and/or face changes which do not affect the character or location of a sign;
2. Signs for a commercial or industrial complex where a previously approved sign program is in effect and the proposed sign conforms to the program;
3. Thirty (30) day extension of temporary signage;
4. Conceptually approved signs, if all Committee conditions are met;
5. Ongoing flag changes if there is no change to the Sign Committee approved flag programs; and
6. Awning signs.

Sign applications which do not meet these specific criteria may be referred by the Chair, Vice-Chair or their designated alternate for Conforming Sign Review, if deemed appropriate. In addition, the full Sign Committee may also direct some projects or portions of projects to the Conforming Sign Review for approval.

F. PERMITS REVIEWED BY THE SIGN COMMITTEE. The Sign Committee shall take action to approve, conditionally approve or deny an application within twenty-one (21) days from the date of acceptance thereof. If no action is taken by the Sign Committee within said period or within any extension approved by the applicant, the application shall be deemed approved as submitted, provided the proposed sign otherwise complies with the provisions of this Chapter.

G. SIGN REVIEW CRITERIA.

1. In reviewing a sign permit application, staff and the Sign Committee

shall apply the following criteria as the basis for action:

- a. The sign shall be in proportion with and visually consistent with the architectural character of the building.
 - b. The sign shall not constitute needless repetition, redundancy or proliferation of signing.
 - c. The location of the proposed sign and the design of its visual elements (lettering, colors, decorative motif, spacing and proportion) shall result in a sign which is legible under normal viewing conditions existing at the sign's proposed location.
 - d. The sign shall not obscure from view or unduly detract from existing signing.
 - e. If the proposed sign will be adjacent to, in or near a residential area, it shall be harmonious and compatible with the residential character of the area.
 - f. The size, shape, color and placement of the sign and any lighting shall be compatible to and harmonious with the building which it identifies and with the area in which it will be located.
 - g. If the sign is to be located in El Pueblo Viejo Landmark District, the sign shall comply with the requirements of Section 22.70.040.E and shall be compatible with the required architectural style described in Section 22.22.104.
2. If a sign permit application satisfies the above criteria and complies with the other provisions of this Chapter, it shall be approved.
- H. FINDINGS. If a sign permit application is denied, specific and detailed

findings setting forth the reasons why the proposed sign violates the criteria set forth above or other provisions of this Chapter shall be prepared in writing and mailed to the applicant or his agent and sign contractor within seven (7) days.

I. APPEALS. The applicant or any interested person may appeal decisions concerning sign permit applications as follows:

1. Appeals to the Architectural Board of Review or the Historic Landmarks Commission. Any action of the Sign Committee or of the Division staff may be appealed by the applicant or any interested party to the Architectural Board of Review or, if the sign is in El Pueblo Viejo Landmark District, to the Historic Landmarks Commission. Said appeal shall be in writing, shall state reasons for the appeal and shall be filed with the staff of the Architectural Board of Review or the Historic Landmarks Commission within ten (10) days of the meeting at which the decision being appealed was rendered. A hearing shall be held by the Architectural Board of Review or the Historic Landmarks

Commission, as appropriate, ~~within fourteen (14) days of the date of~~ at the first available meeting of the Architectural Board of Review or the Historic Landmarks Commission following the filing of the appeal. Notice of the time and place of the hearing shall be sent to the applicant and appellant no later than five (5) days prior to said hearing. The Board or Commission may affirm, reverse or modify the decision of the Sign Committee or staff concerning the sign permit application. Said action shall take place within twenty-eight (28) days from the date of the filing of the appeal. Failure to act within said period will result in the sign permit application being deemed approved to the extent that it complies with

the provisions of this Chapter. Upon such an automatic approval, the Division of Land Use Controls shall issue the permit. No member of the Board or Commission who is also a member of the Sign Committee and who participated in the decision of the Sign Committee shall act on the appeal.

[Staff Comment: *The revision to paragraph 1 is labeled **Change 11** in the Council Agenda Report and is in the “Simple Correction “Clean Up” Items” category of changes. Presently, the Sign Ordinance requires appeals from Sign Committee decisions to be heard by the ABR or HLC within 14 days of the date the appeal is filed. With SFDB creation, the ABR has changed to a bi-weekly full board meeting schedule. Staff has experienced difficulties meeting the specified deadline due to the ABR’s new meeting schedule. The proposed language specifies that the ABR appeal be heard at the “...first available meeting of the ABR or HLC following the filing of the appeal.”]*

2. Appeal to the City Council. An appeal to the City Council from the decision of the Architectural Board of Review or the Historic Landmarks Commission shall be made pursuant to the provisions of Section 1.30.050 of this Code.

J. EXPIRATION OF PENDING APPLICATION. Signs must be installed within six months of the date of approval or the approval is void, unless the applicant has requested and received an extension not exceeding six (6) months from the Community Development Director.

SECTION 9. Section 28.15.083 of Chapter 28.15 of Title 28 of the Santa Barbara Municipal Code is amended to read as follows:

28.15.083 Maximum Net Floor Area (Floor to Lot Area Ratio).

A. **APPLICATION.** The provisions of this Section shall only apply to lots within these zones that have less than 15,000 square feet of net lot area and which are, or are proposed to be, developed with a main or accessory building that is either: (1) ~~taller than one story and a basement~~two or more stories tall, or (2) has a building height of seventeen feet (17') or more.

*[Staff Comment: The revision to Subsection A is labeled **Change 1** in the Council Agenda Report and is in the "Clarifies which categories of projects are subject to Design Review" category of changes. Prior to the May 2007 revision, the NPO generally exempted projects that were "one story and a basement" from Design Review under the miscellaneous design criteria. However, many projects that are one story and a basement can look like two stories to the public. In addition, the Zoning Ordinance definition of a basement states that all basements are considered stories. Throughout the NPO Update process, the concept of referring two or more story projects for review was discussed and supported. This change clarifies that two or more story projects can be considered for FAR requirements depending on other factors, rather than projects taller than "one story and a basement". This change also affects section 22.69.020.C items 1., 2. and 3. regarding Design Review triggers. This change will not affect the floor to lot area ratio (FAR) square footage discounts available to some projects with basements.]*

B. **DEFINITIONS.** For purposes of this Section, the following definitions shall apply:

1. **Net Floor Area of a Building.** The net floor area of a building shall be calculated in accordance with the following general rule and any applicable special rules:

a. General Rule: Net floor area is the area in square feet of all floors confined within the exterior walls of a building, but not including the area of the following: exterior walls, vent shafts, courts, and any areas with a ceiling height of less than five (5) feet above the finished floor.

b. Special Rules: (i) The area occupied by stairs or an elevator shaft within the exterior walls of a building shall be counted only on one floor of the building. (ii) Freestanding accessory buildings that do not require a building permit for construction or installation are excluded from the net floor area calculation. (iii) The net floor area calculation for a basement or cellar shall be reduced by 50% if the vertical distance from grade to ceiling is four feet (4') or less for at least one-half of the circumference of the exterior walls of the basement or cellar. If the vertical distance from grade to the ceiling is four feet (4') or less for the entire circumference of the exterior walls of a basement or cellar, the area of the basement or cellar shall be excluded from the net floor area calculation. See, Sections 28.04.090 and 28.04.140 of this Code for the definitions of "Basement" and "Cellar". (iv) Net floor area within a portion of a building that is designed and permitted as a secondary dwelling unit pursuant to Section 28.94.030.Z of this Code shall be excluded from the net floor area calculation. (v) The area within the exterior walls or supporting columns of a carport shall be included in the calculation of net floor area.

2. **Net Floor Area on a Lot.** The net floor area on a lot shall be the sum of the net floor area of all existing and proposed buildings on the lot.

3. **Net Lot Area.** The total horizontal area within the lot lines of a lot subtracting the horizontal area within any public rights-of-way on the lot.

C. **MAXIMUM NET FLOOR AREA (Floor to Lot Area Ratio).** For purposes of this Section, the maximum net floor area of a lot shall be calculated according to the following formulae:

NET LOT AREA (SQ. FT.)	MAXIMUM NET FLOOR AREA (SQ. FT.)
Less than 4,000	2200
4,000 to 9,999	1200 + (.25 multiplied by the net lot area)
10,000 to 14,999	2500 + (.125 multiplied by the net lot area)

D. PRECLUDED DEVELOPMENT. No application for a building permit may be approved for any project that will: (1) result in an increase of the net floor area on the lot, (2) change the location of any floor area on the second or higher story of any building on the lot, or (3) increase the height of any portion of a building on the lot to a building height of seventeen feet (17') or higher if either of the following is true regarding the project:

1. The net floor area on the lot will exceed the maximum net floor area for the lot as calculated pursuant to this Section, or

2. The net floor area on the lot will exceed eighty-five percent (85%) of the maximum net floor area for the lot as calculated pursuant to this Section and any of the following conditions apply to the lot:

- a. The average slope of the lot or the building site (as calculated pursuant to Section 28.15.080 of this Code) is thirty percent (30%) or greater, or

- b. The building height of any new or existing building or structure on the lot is in excess of twenty-five feet (25'), or

- c. The lot is located in the Hillside Design District established in Section 22.68.080 of this Code and the application proposes five hundred (500)

or more cubic yards of grading outside the footprint of the main building (soil located within five feet (5') of an exterior wall of a main building that is excavated and recompactd shall not be included in the calculation of the volume of grading outside the building footprint).

SECTION 10. Section 28.87.030 of Chapter 28.87 of Title 28 of the Santa Barbara Municipal Code is amended to read as follows:

28.87.030 Uses Permitted.

A. LESS RESTRICTIVE USES PROHIBITED. The express enumeration and authorization in this title of a particular class of building, structure, premises or use in a designated zone shall be deemed a prohibition of such building, structure, premises or use in all zones of more restrictive classification, except as otherwise specified.

B. ADDITIONAL PERMITTED USES. Uses other than those specifically mentioned in this title as uses permitted in each of the zones may be permitted therein provided such uses are similar to those mentioned and are in the opinion of the City Council no more obnoxious or detrimental to the welfare of the community than the permitted uses in the respective zones. The City Council may approve such uses by ordinance amendment after a recommendation has been received from the Planning Commission.

C. EXCLUSION OF PERMITTED USES. The City Council after a recommendation has been received from the Planning Commission may by ordinance amendment, exclude any permitted use from any zone if in the opinion

of the City Council it is obnoxious or detrimental to the welfare of the community.

D. NONCONFORMING BUILDINGS. The following provisions shall apply to all nonconforming buildings and structures or parts thereof legally existing at the effective date of this title.

1. Any nonconforming building or structure may be maintained, improved, or altered only as follows:

a. Improvements that do not change the use or the basic, exterior characteristics or appearance of the building or structure are allowed. Such improvements include but are not limited to the following:

(1) Interior alterations or upgrades to any portion of the nonconforming building or structure, including portions that exceed the current height limitation, such as:

(a) The replacement of wall coverings;

(b) The replacement of existing utilities, or the installation of new utilities;

(c) The replacement of existing interior walls, or the construction of interior walls;

(d) The replacement of existing insulation, or the installation of new insulation; or

(e) The replacement of existing floor coverings, or the installation of new floor coverings;

(2) The replacement of structural members, such as studs, rafters, joists, beams, or other structural members, except where it will result in

an increase in roof pitch;

(3) The replacement or installation of new foundations and slabs under the existing building footprint;

(4) Seismic safety retrofit improvements;

(5) The demolition and replacement of the nonconforming building or structure, provided that the following conditions are met:

(a) The basic, exterior characteristics of the replacement building or structure is not changed, except as allowed in this Section;

(b) The new structure complies with all applicable height and building story limitations; and

(c) The demolition and replacement of the nonconforming building or structure does not continue or perpetuate a nonconforming use.

(6) Additions that conform to the current Zoning standards for the zone.

(7) Solar energy systems, as defined in subdivision (a) of Civil Code section 801.5, that are installed roughly parallel to, and protrude no higher than ten inches (10") above (measured from the top of the roof or other structure perpendicularly to the highest point of the solar energy system), a roof or other similar structure that is legally nonconforming as to the required yard, may extend into a required yard to the extent of the legal nonconforming roof or other similar structure.

b. Minor improvements that change the exterior characteristics are allowed. Such minor improvements are limited to the following:

- (1) The replacement of exterior wall coverings with the same or different materials;
- (2) The replacement of roofing materials with the same or different materials, except those that require an increase in roof pitch;
- (3) Reduction in the number or size of window or door openings;
- (4) Replacement of existing windows or doors where there is no increase in opening size, or changes in the location of the windows or doors.

c. Minor expansions of the net floor area on lots that are nonconforming as to the maximum net floor area or where the proposed expansion would otherwise be deemed precluded development as specified in Section 28.15.083 are allowed under the following conditions:

- (1) The expansion may not exceed 100 square feet of net floor area over the net floor area legally existing on the lot as of the effective date of section 28.15.083;
- (2) Only one ~~nonconforming~~ expansion is allowed pursuant to this subparagraph (c) following the original effective date of section 28.15.083 (even if the expansion is less than 100 square feet of net floor area); and

[Staff Comment: The revisions to subparagraph c. are labeled as **Change 12** in the Council Agenda Staff Report and are in the “Simple Correction “Clean Up” Items” category of changes. The May 2007 ordinance provides for a one-time expansion of up to 100 square feet for homes legal-nonconforming as to required floor area maximums. Proposed language clarifies that this one-time 100-square-foot expansion without a modification is also allowed for homes taller than 25’ and over 85% of the required maximum square footage.]

- (3) A minor expansion of net square footage pursuant to this subparagraph (c) is not permitted in connection with the demolition and

replacement of a nonconforming building.

2. Nothing in the above provisions shall be construed to prohibit any additions or alterations to a nonconforming structure as may be reasonably necessary to comply with any lawful order of any public authority, such as seismic safety requirements, the Americans with Disabilities Act, or a Notice and Order of the Building Official, made in the interest of the public health, welfare, or safety, provided that modification approvals pursuant to Chapter 28.92 of this Title may be required for such additions or alterations.

E. NONCONFORMING USES. Any nonconforming use of a conforming or nonconforming building may be maintained and continued, provided there is no increase or enlargement of the floor area of the buildings or structures on site which are occupied or devoted to such nonconforming use except as provided in this Subsection, and further provided there is no increase in the intensity of such nonconforming use except as otherwise provided in this title. When a building containing a nonconforming use is demolished, the nonconforming use shall be deemed discontinued, and such nonconforming use shall not be continued or perpetuated in any replacement building, except as provided in this Subsection. For the purposes of this section, an increase in intensity of use shall include but not be limited to the following: An increase in the number of required parking spaces for the use, or increase in the amount of traffic, noise, odors, vibration, air pollution including dust and other particulate matter, hazardous materials or other detrimental effects on the surrounding community that are generated by the use.

1. Properties with Nonconforming Residential Density.

Improvements or alterations to a residential structure that do not increase residential density, do not increase floor area (including all accessory buildings except garages and carports), or do not increase the amount of habitable space shall be allowed on lots with nonconforming residential density. For the purpose of this paragraph, residential density shall be defined as the number of dwelling units on a property, except in the R-3, R-4, R-O, C-1, C-2, and C-M Zones, where residential density shall be defined as a combination of the number of dwelling units and the number of bedrooms per unit on a property. The following improvements are allowed, provided that any portion of a building or structure that is nonconforming as to physical standards of the zone shall only be improved consistent with the provisions in SBMC §28.87.030.D.:

- a. New fences;
- b. New windows;
- c. New doors;
- d. Replace windows with doors;
- e. New ground floor decks;
- f. New utilities;
- g. Re-roof, including changes in pitch up to 4 in 12;
- h. New interior or exterior wall coverings;
- i. New insulation;
- j. New foundations;
- k. Structural upgrades;
- l. Seismic Safety retrofit improvements;

- m. New exterior water heater enclosures;
- n. Interior floor plan changes that do not increase the residential density on site or do not increase the amount of habitable space on site, including converting existing habitable space to bathrooms;
- o. New covered or uncovered parking spaces, up to the minimum number required by this Title for the existing dwelling units;
- p. Demolition and replacement, pursuant to the conditions in Section 28.87.038.B of this Title; or
- q. Other improvements which neither increase the residential density on site, add floor area, nor increase the amount of habitable space.

2. Residential Uses in the M-1 Zone. Buildings or structures containing residential uses in the M-1 Zone may be improved and upgraded as allowed in Paragraph 28.87.030.E.1., above, provided the following conditions are met:

- a. There is no increase in floor area, including accessory buildings;
- b. There is no increase in residential density;
- c. If a proposal to upgrade or improve a residential property in the M-1 zone requires discretionary review by the City, notice of such discretionary review shall be given as required by SBMC Sections 22.22.132, 22.68.040, 22.69.040 or 28.92.060, depending on the reviewing body.

3. Neighborhood Markets in Residential Zones. Nonconforming neighborhood markets in residential zones that are properly permitted as of September 1, 1998 may be improved and upgraded as allowed in Paragraph 28.87.030.E.1. above, subject to the following additional conditions:

- a. There is no increase in floor area;
- b. If a proposal to upgrade or improve a neighborhood market in a residential zone requires discretionary review by the City, notice of such discretionary review shall be given as required by SBMC Sections 22.22.132, 22.68.040, or 28.92.060, depending on the reviewing body.

For the purpose of this Section, a neighborhood market shall be defined as a small-scale market that may sell a full range of food and convenience products, including meat, dairy, vegetables, fruits, dry goods, beverages, and prepared food for off-site consumption.

4. Any part of a building, structure or land occupied by such a nonconforming use which is changed to or replaced by a use conforming to the provisions of this title shall not thereafter be used or occupied by a nonconforming use.

5. Any part of a building, structure or land occupied by such a nonconforming use, which use is discontinued or ceases for a period of one (1) year or more, shall not again be used or occupied except by a use allowed by the applicable zoning. This time limit shall not apply to a nonconforming use in a building or structure or on land located in an area which the City Council has, by resolution, found to be impacted by governmental action provided (i) the nonconforming use is resumed within one year of the completion of the governmental action and (ii) the nonconforming use is not more intense than the use which existed prior to the governmental action.

6. If no structural alterations are made, a nonconforming use of a building

may be changed to another nonconforming use of the same or a more restrictive classification. In areas found by the City Council to be impacted by governmental action, any interim use not conforming to the zoning designation but found appropriate by the Planning Commission may be established upon issuance of a conditional use permit.

7. The foregoing provisions of this section shall also apply to buildings, structures, land or uses which hereafter become nonconforming due to any reclassification of zones under this title or any subsequent change in the regulations of this title.

8. The provisions of this Chapter 28.87 concerning the physical change, abandonment, structural alteration, removal, discontinuance, reconstruction, repairing or rebuilding of nonconforming buildings, structures and uses shall not apply to public utility buildings, structures and uses. Nothing in this part shall be construed or applied so as to prevent the expansion, modernization or replacement of public utility buildings, structures, equipment and facilities where there is no change of use or increase in area of the property so used.

9. An existing educational institution may use, for all educational purposes, buildings existing on the date that this subsection is adopted.

SECTION 11. The City Council hereby ordains the following uncoded extension of active final approvals of the Historic Landmarks Commission:

Any final approval granted by the Historic Landmarks Commission that has not expired as of the effective date of this ordinance shall have the duration of such approval extended by one year in order to match the duration of approvals specified in the newly added Section 22.22.180 of the Santa Barbara Municipal Code.